

Message Text

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ACTION ORM-03

INFO OCT-01 ARA-16 ISO-00 SCA-01 SR-02 INSE-00 VO-03

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R 312033Z MAY 74

FM AMEMBASSY MONTEVIDEO

TO SECSTATE WASHDC 6640

C O N F I D E N T I A L SECTION 1 OF 2 MONTEVIDEO 1483

E.O 11652: XGDS2

TAGS: SREF, UY

SUBJ: REFUGEE STATUS

REF: A) STATE 103684

B) MONTEVIDEO 777

C) MONTEVIDEO 3422, NOV 21, 1973

1. THIS EMBASSY RECEIVED WITH SURPRISE THE DEPARTMENT'S INTERPRETATION OF WHAT CONSTITUTES A REFUGEE IN TERMS OF THE CONVENTION RELATING TO STATUS OF REFUGEE. HAVING CAREFULLY REVIEWED THE DEPARTMENT'S COMMENTS, THE EMBASSY, WITH DUE RESPECT, BELIEVES THAT THERE IS SOME CONFUSION IN WASHINGTON AS TO THE NATURE OF THE MLN-TUPAMAROS. IN OUR VIEW THIS MUST BE AN IMPORTANT ELEMENT IN DETERMINING REFUGEE STATUS IN CASES INVOLVING MEMBERS OF THIS ORGANIZATION WHO SEEK ASYLUM IN THE U.S.

2. PARA 2, REFTTEL (A), STATED THAT PRINCIPAL OPERATING DEFINITION OF CONVENTION ON STATUS OF REFUGEE IS THAT A REFUGEE IS ONE WHO IS OUTSIDE HIS COUNTRY OF ORIGIN AND UNABLE TO RETURN TO IT DUE TO "A WELL-FOUNDED FEAR OF PERSECUTION ON ACCOUNT OF HIS RACE, RELIGION, NATIONALITY, MEMBERSHIP OF A PARTICULAR SOCIAL GROUP, OR POLITICAL OPINION". REFTTEL WENT ON TO STATE THAT KEY PHRASE IS "WELL-FOUNDED FEAR" AND THAT CLAVIJO AND BERTOLOTTI HAVE

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"WELL-FOUNDED FEAR OF PERSECUTION ON POLITICAL GROUNDS"

SHOULD THEY RETURN TO URUGUAY.

3. WE BELIEVE EQUALLY KEY OPERATIVE CONDITION TO BE THE MEANING OF "PERSECUTION ON ACCOUNT OF...POLITICAL OPINION" AND IN OUR OPINION NEITHER CLAVIJO NOR BERTOLOTTI QUALIFIES ON THESE GROUNDS. URUGUAYAN AUTHORITIES, IN ALL OTHER MLN-TUPAMARO CASES KNOWN TO US, ARE NOT SEEKING TO PERSECUTE TUPAMAROS FOR THEIR POLITICAL OPINIONS (DESPITE CONTRARY "DOCUMENTARIES" BY SUCH AS COSTA GRAVAS) BUT FOR THEIR TERRORIST ACTIVITIES WHICH HAVE INCLUDED MURDER (IN ONE INSTANCE COMMITTED AGAINST A MEMBER OF THIS MISSION), KIDNAPPING (IN SEVERAL INSTANCES DIRECTED AGAINST MEMBERS OF THIS MISSION), ASSAULT, BOMBING, ROBBERY, HIJACKING, ETC. THE MLN-TUPAMAROS DID NOT PREACH A POLITICAL IDEOLOGY ADVOCATING VIOLENT OVERTHROW OF THE GOVERNMENT? THEY INSTIGATED A REIGN OF TERROR IN A COUNTRY WHICH, WHEN THEY DID IT, WAS CONSIDERED A MODEL OF DEMOCRACY.

4. THE REFUGEE CONVENTION IS DESIGNED TO PROTECT PERSONS FROM PERSECUTION FOR SPECIFIC CONDITIONS, BELIEFS, MOTIVES AND ASSOCIATIONS, BUT NOT, WE BELIEVE, FROM QUESTIONING OR PROSECUTION (REPEAT PROSECUTION) FOR CRIMINAL ACTS. THE U.S. DECLARATION OF INDEPENDENCE REFERS TO CERTAIN INALIENABLE RIGHTS AND STATES THAT "WHENEVER ANY FORM OF GOVERNMENT BECOMES DESTRUCTIVE OF THESE ENDS, IT IS THE RIGHT OF THE PEOPLE TO ABOLISH IT", ETC. WE BELIEVE THE NEITHER THE SPIRIT NOR THE LETTER OF THE CONVENTION NOR OF IDEALS SUCH AS THOSE EXPRESSED IN THE DECLARATION OF INDEPENDENCE WARRANT THE CONCLUSION THAT THE TUPAMAROS ARE PROTECTED OR CONDONED BY EITHER. THEY STARTED A REIGN OF TERROR NOT TO STRUGGLE AGAINST TYRANNY BUT RATHER TO IMPOSE THEIR WILL IN A FREE, OPEN, DEMOCRATIC, NON-REPRESSIVE SOCIETY WHICH WAS SOCIALLY PROGRESSIVE TO A FAULT. FOR THEIR OWN REASONS THE TUPAMAROS CHOSE TO IGNORE NORMAL, LEGAL CHANNELS FOR DISSENT AND TOOK THE CRIMINAL ROUTE. IN DOING THIS THEY BECAME A RUTHLESS, TERRORIST GROUP FOR WHICH WE CAN SEE NO VALIDITY IN A CLAIM THAT THEY ARE NOW PERSECUTED FOR POLITICAL OPINION.

5. OVER THE PAST FEW YEARS THE USG HAS MADE A CONCERTED EFFORT IN THE UNITED NATIONS AS WELL AS ELSEWHERE TO HAVE

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PRECISELY THE CRIMES COMMITTED BY THE TUPAMAROS, NOT ONLY AGAINST THEIR PEOPLE BUT ALSO AGAINST THE DIPLOMATIC COMMUNITY HERE (INCLUDING U.S., BRITISH AND BRAZILIAN), TREATED AS COMMON CRIMES. WE HAVE SOUGHT TO REMOVE TERRORISTS FROM THE PROTECTION GRANTED BY SOME STATES TO THOSE WHO COMMIT WHAT THOSE STATES DETERMINE TO BE POLITICALLY MOTIVATED CRIMES. IN FACT, WE HAVE RECENTLY NEGOTIATED AN EXTRADITION TREATY WITH THE GOU, ALREADY

CONSENTED TO BY THE U.S. SENATE, WHICH MAKES, INTER ALIA, AIR PIRACY, ASSAULTS AGAINST PUBLIC OFFICIALS AND FABRICATION OF EXPLOSIVES EXTRADITABLE OFFENSES. THE MLN-TUPAMAROS HAVE BEEN GUILTY OF ALL THESE OFFENSES. WITH THIS TREATY NOW BEFORE URUGUAY'S LEGISLATIVE BODY FOR RATIFICATION, ARE WE PREPARED TO GRANT REFUGEE STATUS TO TUPAMAROS? IF WE ARE, AND IF THIS MEANS WE WOULD REFUSE TO GRANT EXTRADITION IN CASE INVOLVING A TUPAMARO TERRORIST, WE WOULD THUS MAKE MOCKERY OF THIS TREATY IN URUGUAYAN EYES. IF THIS WERE TO BECOME KNOWN HERE, RATIFICATION WOULD BE IMPOSSIBLE. THE GOU LOOKS AT THE TUPAMAROS AS WE ASSUME THE USG LOOKS AT THE SYMBIONESE "ARMY"--AS TERRORISTS, NOT AS A SOCIAL OR POLITICAL OPINION GROUP.

6. REFERRING ONCE AGAIN TO PARA 2, REFTTEL (A), WE DO NOT SHARE THE DEPT'S STATED VIEW THAT POLICE QUESTIONING FOR POSSIBLE CRIMINAL ACTIVITY IS "PERSECUTION ON POLITICAL GROUNDS". CLAVIJO, WHOSE WIFE IS A TUPAMARO, WAS ADMITTEDLY QUESTIONED MORE THAN ONCE. HOWEVER, AS EXPLAINED IN REFTTEL (B), HE WAS ABLE FREELY TO COME TO THE EMBASSY, OBTAIN A VISA AND LEAVE URUGUAY WITHOUT MOLESTATION. DOES NORMAL POLICE QUESTIONING FOR POSSIBLE CRIMINAL ACTIVITY OR KNOWLEDGE THEREOF CONSTITUTE PERSECUTION? IF SO, ARE TERRORISTS AND OTHER COMMON CRIMINALS TO BE GRANTED REFUGEE STATUS UNDER THE DEPARTMENT'S INTERPRETATION SIMPLY BECAUSE THEY HAVE BEEN QUESTIONED MORE THAN ONCE?

7. WITH RESPECT TO BERTOLOTTI THERE IS A WARRANT OUT FOR HIS ARREST. IT IS NOT BASED ON THEORIES BUT ON WHAT GOU AUTHORITIES DEEM TO BE EVIDENCE THAT HE WAS AN IDENTIFIED MEMBER OF THE MLN AND THAT HE USED MLN-SUPPLIED EQUIPMENT TO PROVIDE TRANSPORTATION AND PERFORM OTHER TASKS TO SUPPORT MLN OPERATIONS.

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C O N F I D E N T I A L SECTION 2 OF 2 MONTEVIDEO 1483

8. THE DEPARTMENT, IN PARA 3 OF REFTTEL (A) STATES THAT AN INDIVIDUAL'S ANTI-U.S. POSTURE HAS NO BEARING ON HIS CLASSIFICATION OR LACK OF CLASSIFICATION AS A REFUGEE. AS THE DEPARTMENT IS AWARE, THE MLN TUPAMAROS CAME INTO BEING NOT FOR ANTI-U.S. REASONS BUT RATHER DIRECTLY TO DEAL WITH AND ATTACK URUGUAYAN SOCIETY; THEIR ANTI-U.S. POSTURE AND ACTS ARE ONLY INCIDENTAL TO THEIR PRIMARY ANTI-URUGUAYAN REASON FOR BEING. MOREOVER, THIS EMBASSY HAS NEITHER MENTIONED ANYTHING ABOUT ANY ANTI-U.S. ATTITUDES WITH RESPECT TO THESE SPECIFIC CASES, NOR APPLIED ANY SUCH STANDARDS TO ITS JUDGMENTS NOR IMPLIED ANY SUCH THING. WE CANNOT THEREFORE SEE ANY BASIS FOR THE DEPARTMENT'S HAVING INJECTED THE SUBJECT WITH RESPECT TO THE CASES IN QUESTION HERE.

9. AS THE DEPARTMENT KNOWS, THERE IS SOME LACK OF DUE PROCESS IN URUGUAY AT THIS TIME, BUT IT STEMS LARGELY FROM A REACTION TO TUPAMARO TERRORISM. WE BELIEVE THE DEPARTMENT'S EVALUATION IN THE LAST SENTENCE OF PARA 4 (RFFTEL A) IS AN ASSUMPTION NOT NECESSARILY VALID WHICH HAS NO REAL BEARING ON THE BASIC ISSUE OF WHETHER A MEMBER OF THE TERRORIST MLN-TUPAMAROS ORGANIZATION IS LEGITIMATELY ENTITLED TO POLITICAL REFUGEE STATUS.

10. THIS EMBASSY BELIEVES THE ISSUES RAISED IN THIS EXCHANGE OF MESSAGES TO BE OF FUNDAMENTAL IMPORTANCE AND THAT THEY EMBRACE ISSUES OF WORLD WIDE SIGNIFICANCE. BASED ON OUR UNDERSTANDING OF APPLICABLE TREATIES, CONVENTIONS, AND LAWS, TOGETHER WITH AN
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INTIMATE ACQUAINTANCE WITH THE HISTORY AND NATURE OF THE MLN-TUPAMARO MOVEMENT, WE RAISE SERIOUS QUESTION AS TO THE VALIDITY OF THE DEPARTMENT'S POSITION AS INDICATED IN THE REFTTEL. WE THEREFORE RECOMMEND THAT THIS MATTER BE REVIEWED AT THE HIGHEST LEVELS AND WILL AWAIT FURTHER COMMENTS. IN THE MEANTIME, AS WE CANNOT IN GOOD CONSCIENCE RECOMMEND REFUGEE STATUS FOR A PERSON SUCH AS BERTOLOTTI WHO BELONGS TO THE MLN-TUPAMAROS, WE WILL MAKE RECOMMENDATIONS IN RESPONSE TO ANY FURTHER INQUIRIES ON THE BASIS OF FACTS OF EACH CASE AS WE SEE THEM. WITH RESPECT TO CLAVIJO, WE STILL BELIEVE THAT NOTHING IN HIS CASE WARRANTS HIS TREATMENT AS A REFUGEE.
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